

GONZALO PUYAT & SONS INC., PETITIONER AND APPELLEE, VS. PHILIPPINE NATIONAL BANK, OPPOSITOR AND APPELLANT.*G.R. No. L-16843. April 30, 1962*

Ponente: BARRERA, J.

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The instant case arose from a petition by Gonzalo Puyat & Sons, Inc. filed under Section 112 of the Registration Law, Act No. 496, in the Court of First Instance of Rizal, sitting as cadastral court asking for the reannotation in the subsequently issued certificates of title, of Entries Nos. 26980 and 41373, concerning a sale in its favor, originally appearing in the cancelled Transfer Certificate of Title No. 31423 registered in the name of Ricardo Santos.

The records show that to satisfy a favorable judgment obtained by Gonzalo Puyat & Sons, Inc. against Santos in another case, the parcel of land covered by Transfer Certificate of Title No. 31423 was sold at public auction and awarded to said judgment creditor, the sole bidder therein. Upon expiration of the redemption period, the sheriff issued the corresponding certificate of sale in favor of Puyat, which deed was accordingly registered on August 12, 1957 and annotated at the back of said TCT No. 31423. It appears in the same certificate, however, that said property was already subject to a registered mortgage in favor of the Philippine National Bank as of March, 1946, prior to the annotations in favor of Puyat. Subsequently, the Bank, foreclosing the mortgage extra-judicially and having offered the highest bid in the ensuing public auction, obtained a certificate of sale which was registered on December 20, 1957. It does not appear that the judgment creditor, Gonzalo Puyat & Sons, Inc. was notified of the foreclosure and sale of the property.

At the expiration of the period to redeem the property, the Bank consolidated its ownership over the same as a consequence of which TCT No. 31423 (in the name of Ricardo Santos) was cancelled and TCT No. 55826 was issued in its name. The encumbrance in favor of Gonzalo Puyat & Sons, however, was not carried in said new title. The lot was later subdivided into two and sold to Dr. Salvador R. Samson and Celedonia Medina Samson, who were issued TCT Nos. 63306 and 63305, respectively. These last two titles, similarly, did not contain the annotation of the sale to Puyat. Thereupon, Gonzalo Puyat & Sons, Inc. filed in the Court of First Instance of Rizal, sitting as a land registration court, a petition for the purpose already stated at the beginning of this opinion.

Opposing the same, the Bank contested the jurisdiction of the court to pass upon the petition on the ground that petitioner was seeking to enforce an alleged right (to redeem the property), which should properly be ventilated in a regular court, and disclaimed knowledge of the non-inclusion of any lien, originally appearing in TCT No. 31423, in TCT No. 55826 subsequently issued in its name.

Finding that the encumbrance in favor of petitioner was actually omitted in the new titles without proper court authorization, the court, without resolving the merits of the alleged right of petitioner on the property, granted the petition and directed the reannotation of the said encumbrance on TCT Nos. 55826, 63305 and 63306. Hence, this appeal by the oppositor Bank.

There seems to be no controversy as to the fact of the petitioner's position as a junior encumbrancer, it having obtained a lien on the property subject to the previous mortgage in favor of the Philippine National Bank. The only issue here is whether the Register of Deeds of Rizal has authority to omit, without any specific court order, to transfer or carry over the annotation of Puyat's junior lien appearing in the cancelled certificate of title, to the new title issued to the first mortgagee by reason of the consolidation of the latter's right upon foreclosure of its mortgage.

It is already well-settled that upon a proper foreclosure of a first mortgage, all liens subordinate to the mortgage are likewise foreclosed, and the purchaser at public auction held pursuant thereto acquires title free from the subordinate liens.[1] Ordinarily, therefore, and unless representation is duly presented at the time of the cancellation of the certificate of title by reason of the foreclosure of the superior mortgage lien, that irregularities attended the foreclosure, such as lack of notice to or non-inclusion of inferior lien holders in the foreclosure suit or proceeding,[2] the register of Deeds is authorized to issue the new titles without carrying over the annotation of subordinate liens. And that is what has happened in the case at bar. At the time the Register of Deeds cancelled the old title of Santos, the mortgagor, upon the consolidation of the first mortgagee's right by virtue of the foreclosure of the first mortgage, and issued the new title in favor of the Philippine National Bank as purchaser in the public auction, no irregularity was brought to his attention. Hence the Register of Deeds correctly acted, even without court order, in not carrying over to the new title, annotations of inferior liens appearing in the old title. And this did not prejudice the right, if any, of petitioner Puyat to questions, in an appropriate ordinary action, the legality of the foreclosure proceedings or the effect of the alleged lack of notice to it of such foreclosure. Certainly such questions can not be litigated in a summary proceeding such as is contemplated under Section 112 of Act 496 invoked by petitioner Gonzalo Puyat & Sons, Inc.

Wherefore, the order of the lower court appealed from is hereby reversed, without prejudice to the proper determination in an appropriate proceeding or action, of appellee's alleged right over the property. No costs.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., and Paredes, JJ., concur.

[1] *El Hogar Filipino vs. Philippine National Bank*, 64 Phil., 582; *Capistrano vs. Philippine National Bank et al.*, 101 Phil., 1117; 56 Off. Gaz., [50] 7624; *Bank of the P. I. vs. Noblejas*, 105 Phil., 418; 56 Off. Gaz., [20] 3640.

[2] Even in instances of this nature it has been held that failure to so notify or include inferior lienholders does not invalidate the foreclosure proceedings (*Somes vs. Government*, 62 Phil., 432) but at most will leave the equity of redemption unforeclosed as against such lienholder not notified or not-included as party-defendant (*Sun Life Ass. Co. of Canada vs. Gonzales*, 52 Phil., 271; *Government vs. Cajigaz*, 55 Phil. 667)

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